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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MELINDA KAY THOMAS,

Defendant and Appellant.

E074164

(Super.Ct.No. FVI17002966)

OPINION

APPEAL from the Superior Court of San Bernardino County. Debra Harris,
Judge. Affirmed.

Kendall Dawson Wasley, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant, Melinda Kay Thomas, filed a motion to modify the
amount of restitution fine pursuant to Penal Code section 1202.46, which the court
denied. After defendant filed a notice of appeal, this court appointed counsel to represent

her. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the facts and a statement of the case. We affirm.

I. PROCEDURAL BACKGROUND

In September 2018, a jury found defendant and appellant guilty of attempted criminal threats (Pen. Code, §§ 644, 422, subd. (a), count 1),¹ two counts of possessing a firearm as a felon (§ 29800, subd. (a)(1), counts 2 & 3), and one count of possessing ammunition as a felon (§ 30305, subd. (a)(1), count 4). The jury further found that defendant was armed with a firearm in committing the count 1 offense. (§ 12022, subd. (a)(1).) The court found that defendant had one prior strike conviction (§ 667, subds. (b)-(i)), one prior serious felony conviction (§ 667, subd. (a)(1)), and two prison priors (§ 667.5, subd. (b)). The court sentenced defendant to 15 years eight months in state prison. Without objection from defense counsel, the court additionally imposed a \$6,000 restitution fine pursuant to section 1202.4, subdivision (b).

On August 28, 2019, defendant filed a motion to modify restitution pursuant to Penal Code section 1202.46. In the motion, defendant argued that “the fines, fees, and assessments imposed by the trial court should be stayed because there was no finding [defendant] had the ability to pay them.” (*People v. Dueñas, supra*, 30 Cal.App.5th 1157.) On October 28, 2019, the court denied the motion.

Defendant filed a timely notice of appeal.

¹ All further statutory references are to the Penal Code.

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which she has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

III. DISPOSITION

The order denying defendant's motion is affirmed.

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McKINSTER

J.

I concur:

RAMIREZ

P.J.

[*P. v. Thomas*, E074164]

MENETREZ, J., Dissenting.

The appellate review procedures under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*), in which we review the record ourselves to determine whether there are any arguable issues, apply “only to a defendant’s first appeal as of right.” (*People v. Thurman* (2007) 157 Cal.App.4th 36, 45; *People v. Serrano* (2012) 211 Cal.App.4th 496, 498 (*Serrano*).) *Wende/Anders* review is highly unusual and rooted in the constitutional right to counsel, and courts have repeatedly declined to apply it in other contexts. (*Pennsylvania v. Finley* (1987) 481 U.S. 551, 554-555; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 535; *In re Sade C.* (1996) 13 Cal.4th 952, 959; *People v. Kisling* (2015) 239 Cal.App.4th 288, 290; *People v. Dobson* (2008) 161 Cal.App.4th 1422, 1425; *People v. Taylor* (2008) 160 Cal.App.4th 304, 307-308; *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570; 579.) Because this appeal concerns a postjudgment proceeding in which there is no constitutional right to counsel, appellant has no right to *Wende/Anders* review. Because appellant’s counsel filed an opening brief raising no issues, and appellant was notified but did not file a supplemental brief, we should not affirm but rather should dismiss the appeal as abandoned. (*Serrano*, 211 Cal.App.4th at pp. 503-504.) I therefore respectfully dissent.

MENETREZ

J.